



March 16, 2009

Jennifer J. Johnson
Secretary, Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

RE: Docket No. R-1343
Proposed amendments to Regulation E – Electronic Federal Funds Act

Dear Ms. Johnson and Board of Governors:

Thank you for the opportunity to comment on the proposed amendments to Regulation E, specifically as they relate to courtesy overdraft programs.

By way of introduction, United Community Bank is an \$8 billion state chartered bank headquartered in Georgia with 107 banking offices located throughout Georgia, North Carolina and Tennessee. United does offer courtesy overdraft protection to customers.

Comments

- Amendments to Regulation DD have already been implemented to address the courtesy overdraft program that banks offer. It is unclear why the Board would desire to amend yet another regulation to cover fees and disclosures that are already addressed and required to be disclosed under Regulation DD. There are many channels for the customer to access funds in their checking account, but that does not mean that fees associated with that access should be addressed under individual bank regulations. If this proposal were not limited to ATMs and debit card transactions it would have remained as an amendment to Regulation DD. Limiting it to these forms of access should in no way change the regulation that governs the overall product.

We do not support the board's proposal, but encourage the Board to limit any amendments that are made to Regulation DD – Truth in Savings.

- Consumers have a responsibility to manage their accounts wisely. This includes proper accounting of deposits and withdrawals and periodically balancing their account statements. The consequence of improper account management is that the consumer pays a substantial fee because of NSF items, possibly both to the bank and to the merchant. Yet, through these proposed amendments, both regulators and

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consumers appear to think that banks are the bad guys in this process and that there is a need to implement safeguards to protect the consumer from themselves.

Through both the courtesy overdraft guidance issued and changes implemented through Regulation DD banks have already incurred significant costs to make processing and programming changes to comply with the new rules. Customers can see, every month, exactly how much they are spending on NSF fees for items that are both paid and returned. Yet, even with these amendments that regulators have already implemented, there is a segment of our customer base that chose to spend money that they do not have, month after month, and incur NSF fees.

People make choices about whether or not to manage their accounts wisely. No amount of government intervention is going to change that. To penalize banks and say that they are responsible for the customer's bad choices because we offer a courtesy overdraft product is highly inaccurate.

- For POS and ATM transactions, the bank is required to post all such transactions that are presented against the customer's account. After they are posted the customer can then dispute the transaction if they chose to. The problem comes with whether or not the bank is allowed to charge the customer an NSF fee for the transaction.
 - Did the customer opt in/opt out?
 - Is the transaction a one-time transaction or recurring transaction?
 - Does the transaction meet one of the exception rules?
 - Did the merchant authorize the transaction?

As a result of these questions, EVERY POS transaction that overdraws a customer's account will now have to be manually researched in order to determine if the bank is allowed to assess an NSF fee to the customer based on the above criteria. United Community Bank literally has thousands of overdrafts each day that are the result of POS and ATM transactions. It would be IMPOSSIBLE to research each and every transaction to determine whether or not the charge can be assessed. There are no amendments to the core processing system that would eliminate this manual process of researching each individual POS transaction. The Board's proposal is simply not the "easy fix" that it sounds like it is and is operationally impossible.

- The proposal states that the institution is not permitted to charge an NSF fee when a transaction is not authorized. To imply that only small dollar "low risk" items are being presented by the merchant without prior authorization is highly inaccurate. Additionally, there are many merchants that do not have to obtain authorizations every time they initiate a transaction. For example, hotels, airlines, and car-rentals only require an authorization once a year. Very significant transactions can be sent through the payment system in those instances and the bank has no choice but to pay them and overdraw the customer's account....or if the customer's account is closed then we have to charge the transaction off. Once again, the time and expense associated with researching transactions that may have been authorized up to a year earlier is unthinkable.

- UCBI is very much opposed to any requirement that differentiates ATM and POS transactions from any other transaction to the customer's account. No matter how well written any opt-in or opt-out notice might be, it will be difficult to explain to customers that accessing their account by check will be treated differently than accessing their account by ATM or debit card.

Consumers that "opt out" of the courtesy overdraft program will do so in an attempt to avoid being assessed an NSF fee for overdrafts. However, those same consumers will be irate with the bank when their ATM access or POS access is denied and they have no other source of payment of services available. It is not that the customer does not want access to overdraft courtesy funds, it is that they do not want to be assessed an NSF fee when their account is overdrawn by a small dollar amount. That is true whether paying by debit card or by check. The difference will be that the merchant will accept the check, whereas the debit card would be declined.

As a personal example, I recently attempted to use my debit card at the grocery store. When the card was declined for NSF reasons I wrote a check for the groceries instead. As a bank customer I was aggravated because I had to go through the hassle of writing a check instead of using a debit card. In either instance I would have been charged the same NSF fee.

As a general rule customers know if they have money in their accounts, and they know if they don't then they will be assessed an NSF fee. The customer should not be inconvenienced or even confused by having to remember that funds available to them can only be accessed under certain conditions.

- It is this bank's opinion that an opt-in approach would be a customer service nightmare. Our customers have an expectation of being able to access courtesy overdraft funds at ATM and POS locations. To suddenly remove that access, even with a 30-60 day window of notice to the customer, will result in untold customer complaints and inconveniences because they either didn't read the notice, or didn't understand how it applied to their accounts.

The opt-in solution creates a technology nightmare as well. For opt-in to work, our IT Department would have to institute an across-the-board programming change to all of our debit cards so that overdraft courtesy funds are not included in balance files for ATM or POS processing. As customers notify the bank of their decision to opt-in, this would require a manual process to reverse the automatic programming. In a smaller institution this might not seem like a large burden, but our bank has well over 110,000 overdraft courtesy accounts that would be affected by this change. Even if only a small percentage of our customers decided to opt-in, the manual process to convert them is not manageable.

For new customers, it is an inconvenience to require them to contact the bank to establish a courtesy overdraft service that is simply a part of the account. This will

deny them access to funds that are available to them for emergency situations. UCBI in no way supports an opt-in requirement on behalf of the customer.

- United Community Bank does not have the capability of providing the customer with an opt-out notice when they incur an NSF charge specifically for ATM or POS items. Currently our practice is to send our customer an NSF/overdraft notice at the time the overdraft is incurred. Additionally, the customer receives a monthly statement showing required NSF fees that have been incurred, both during that statement cycle and year-to-date. Operational challenges associated with providing an additional opt-out notice include significant programming changes required by our core processing vendor, and even with those changes it will be impossible for the system to generate the notice on a case-by-case basis when and if certain conditions are met.
 - The system has no way to distinguish when the NSF charge was the result of an ATM/POS transaction, therefore can not determine when the notice would be required.
 - The system can not differentiate between accounts with courtesy overdraft and those without it, therefore could not determine when the notice would be required.
 - The system would be unable to determine if any of the exception rules applied, thereby allowing the bank to assess the NSF fee.
 - Our customers generally have a \$500 courtesy overdraft limit, however, we FREQUENTLY pay the customer into a higher overdraft because they are a good customer. The system would be unable to determine that this is outside of the courtesy overdraft program.

No additional benefits are to be gained by the consumer by providing any form of periodic opt out notice. United Community Bank does not support such a requirement as it will undoubtedly lead to substantial increases in programming costs, printing costs and mailing costs that will ultimately be passed along to the customer through increased bank fees.

Conclusion

We appreciate the opportunity to share our comments on the proposed regulatory amendments. While the proposal is well-intended, significant operational impossibilities and unintended consequences will occur making it impossible for the bank to comply. For that reason, we recommend that the proposal be declined in its entirety.

Respectfully submitted,



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United Community Bank